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CODIFICATION

The Agricultural Trade Act of 1978, comprising this chapter, was originally enacted as Pub. L. 95-501, Oct. 21, 1978, 92 Stat. 1685, which enacted sections 1707b to 1707d, 1765a to 1765h, 1769, and 2211a of this title, amended sections 1707a, 1761, 1762, 1764, 1765, and 1766b of this title and section 5314 of Title 5, Government Organization and Employees, redesignated sections 1762(d), (f), and 1763 as sections 1766a to 1766c of this title, and enacted provisions set out as notes under sections 612c-3, 1761, and 2211a of this title and section 2431 of Title 19, Customs Duties. The Act is shown herein, however, as having been added by Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3668, because of the extensive amendments, renumbering, reorganization of subject matter, and expansion of the basic Act’s provisions by Pub. L. 101-624.

SUBCHAPTER I—GENERAL PROVISIONS

§ 5601. Purpose

It is the purpose of this chapter to increase the profitability of farming and to increase opportunities for United States farms and agricultural enterprises by—

- (1) increasing the effectiveness of the Department of Agriculture in agricultural export policy formulation and implementation;

(2) improving the competitiveness of United States agricultural commodities and products in the world market; and

(3) providing for the coordination and efficient implementation of all agricultural export programs.

(Pub. L. 95-501, title I, §101, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669.)

PRIOR PROVISIONS

A prior section 101 of Pub. L. 95-501 amended section 1707a of this title prior to the complete revision of Pub. L. 95-501 by Pub. L. 101-624.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-465, title IV, §411(a)(1), Dec. 8, 1994, 108 Stat. 4962, provided that: “This subsection [amending section 5651 of this title] may be cited as the ‘Export Enhancement Program Amendments of 1994’.”

SHORT TITLE

Section 1 of Pub. L. 95-501, as added by Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669, provided that: “This Act [enacting this chapter] may be cited as the ‘Agricultural Trade Act of 1978’.”

§ 5602. Definitions

As used in this chapter—

(1) Agricultural commodity

The term “agricultural commodity” means any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in section 1471(2) of this title and insects), and any product thereof.

(2) Developing country

The term “developing country” means a country that—

(A) has a shortage of foreign exchange earnings and has difficulty accessing sufficient commercial credit to meet all of its food needs, as determined by the Secretary; and

(B) has the potential to become a commercial market for agricultural commodities.

(3) Secretary

The term “Secretary” means the Secretary of Agriculture.

(4) Service

The term “Service” means the Foreign Agricultural Service of the Department of Agriculture.

(5) Unfair trade practice

(A) In general

Subject to subparagraph (B), the term “unfair trade practice” means any act, policy, or practice of a foreign country that—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement to which the United States is a party;

(ii) in the case of a monopolistic state trading enterprise engaged in the export sale of an agricultural commodity, implements a pricing practice that is inconsistent with sound commercial practice;

(iii) provides a subsidy that—

(I) decreases market opportunities for United States exports; or

(II) unfairly distorts an agricultural market to the detriment of United States exporters;

(iv) imposes an unfair technical barrier to trade, including—

(I) a trade restriction or commercial requirement (such as a labeling requirement) that adversely affects a new technology (including biotechnology); and

(II) an unjustified sanitary or phytosanitary restriction (including any restriction that, in violation of the Uruguay Round Agreements, is not based on scientific principles;¹

(v) imposes a rule that unfairly restricts imports of United States agricultural commodities in the administration of tariff rate quotas; or

(vi) fails to adhere to, or circumvents any obligation under, any provision of a trade agreement with the United States.

(B) Consistency with 1974 Trade Act

Nothing in this chapter may be construed to authorize the Secretary to make any determination regarding an unfair trade practice that is inconsistent with section 2411 of title 19.

(6) United States

The term “United States” includes each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(7) United States agricultural commodity

The term “United States agricultural commodity” means—

(A) an agricultural commodity or product entirely produced in the United States; or

(B) a product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) that the Secretary determines to be a high value agricultural product.

For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46 in waters that are not waters (including the territorial sea) of a foreign country.

(8) Independent states of the former Soviet Union

The term “independent states of the former Soviet Union” means the following: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

(Pub. L. 95-501, title I, §102, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669; amended Pub. L. 102-511, title VII, §702, Oct. 24, 1992, 106 Stat. 3349; Pub. L. 104-127, title

II, §243(c), Apr. 4, 1996, 110 Stat. 967; Pub. L. 107-171, title III, §3104(b), May 13, 2002, 116 Stat. 290.)

AMENDMENTS

2002—Par. (5)(A)(ii) to (vi). Pub. L. 107-171 added cls. (ii) to (vi) and struck out former cl. (ii) which read as follows: “is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.”

1996—Par. (7). Pub. L. 104-127 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) with respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

“(B) with respect to a product of an agricultural commodity—

“(i) a product all of the agricultural components of which are entirely produced in the United States; or

“(ii) any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if—

“(I) such component is an added, de minimis component,

“(II) such component is not commercially produced in the United States, and

“(III) there is no acceptable substitute for such component that is commercially produced in the United States.”

1992—Par. (1). Pub. L. 102-511, §702(a), substituted “feed, fiber, or livestock (including livestock as it is defined in section 1471(2) of this title and insects)” for “feed, or fiber”.

Par. (8). Pub. L. 102-511, §702(b), added par. (8).

§ 5603. Agricultural export promotion strategy

(a) In general

The Secretary shall develop a strategy for implementing Federal agricultural export promotion programs that takes into account the new market opportunities for agricultural products, including opportunities that result from—

(1) the North American Free Trade Agreement and the Uruguay Round Agreements;

(2) any accession to membership in the World Trade Organization;

(3) the continued economic growth in the Pacific Rim; and

(4) other developments.

(b) Purpose of strategy

The strategy developed under subsection (a) of this section shall encourage the maintenance, development, and expansion of export markets for United States agricultural commodities and related products, including high-value and value-added products.

(c) Goals of strategy

The strategy developed under subsection (a) of this section shall have the following goals:

(1) Increase the value of United States agricultural exports each year.

(2) Increase the value of United States agricultural exports each year at a faster rate than the rate of increase in the value of overall world export trade in agricultural products.

(3) Increase the value of United States high-value and value-added agricultural exports each year.

(4) Increase the value of United States high-value and value-added agricultural exports

¹So in original. There probably should be a closing parenthesis.

each year at a faster rate than the rate of increase in the value of overall world export trade in high-value and value-added agricultural products.

(5) Ensure that to the extent practicable—

(A) all obligations undertaken in the Uruguay Round Agreement on Agriculture that significantly increase access for United States agricultural commodities are implemented to the extent required by the Uruguay Round Agreements; or

(B) applicable United States laws are used to secure United States rights under the Uruguay Round Agreement on Agriculture.

(d) Priority markets

(1) Identification of markets

In developing the strategy required under subsection (a) of this section, the Secretary shall annually identify as priority markets—

(A) those markets in which imports of agricultural products show the greatest potential for increase; and

(B) those markets in which, with the assistance of Federal export promotion programs, exports of United States agricultural products show the greatest potential for increase.

(2) Identification of supporting offices

The President shall identify annually in the budget of the United States Government submitted under section 1105 of title 31 each overseas office of the Foreign Agricultural Service that provides assistance to United States exporters in each of the priority markets identified under paragraph (1).

(Pub. L. 95-501, title I, §103, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3670; amended Pub. L. 102-237, title III, §308, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 104-127, title II, §241(a), Apr. 4, 1996, 110 Stat. 963.)

AMENDMENTS

1996—Pub. L. 104-127 amended section generally, substituting present provisions for provisions requiring development of long-term agricultural trade strategy and providing for goals and contents of strategy, establishment of priority markets, review of strategy, confidentiality, withholding of information from Congress, and termination of section on Dec. 31, 1995.

1991—Subsec. (d)(2). Pub. L. 102-237 inserted a closing parenthesis before period at end.

PROHIBITION ON USE OF FUNDS FOR PROMOTION OF TOBACCO OR TOBACCO PRODUCTS

Pub. L. 108-199, div. A, title VII, §770, Jan. 23, 2004, 118 Stat. 40, provided that: “Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.”

USE OF DEPARTMENT OF AGRICULTURE PROGRAMS FOR PROMOTION OF WOOD AND PROCESSED WOOD PRODUCTS

Section 4404 of Pub. L. 100-418 provided that: “The Secretary of Agriculture shall actively use Department of Agriculture concessional programs and export credit guarantee programs to promote the export of wood and processed wood products.”

§ 5603a. Global market strategy

(a) In general

Not later than 180 days after May 13, 2002, and biennially thereafter, the Secretary of Agri-

culture shall consult with the Committee on Agriculture, and the Committee on International Relations, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the formulation and implementation of a global market strategy for the Department of Agriculture that, to the maximum extent practicable—

(1) identifies opportunities for the growth of agricultural exports to overseas markets;

(2) ensures that the resources, programs, and policies of the Department are coordinated with those of other agencies; and

(3) remove¹ barriers to agricultural trade in overseas markets.

(b) Review

The consultations under subsection (a) of this section shall include a review of—

(1) the strategic goals of the Department; and

(2) the progress of the Department in implementing the strategic goals through the global market strategy.

(Pub. L. 107-171, title III, §3206, May 13, 2002, 116 Stat. 301.)

CODIFICATION

Section was enacted as part of the Farm Security and Rural Investment Act of 2002, and not as part of the Agricultural Trade Act of 1978 which comprises this chapter.

§ 5604. Preservation of traditional markets

The Secretary shall, in implementing programs of the Department of Agriculture intended to encourage or assist exports of agricultural commodities, seek to preserve traditional markets for United States agricultural commodities.

(Pub. L. 95-501, title I, §104, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672.)

§ 5605. Independence of authorities

Each authority granted under this chapter shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

(Pub. L. 95-501, title I, §105, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672.)

§ 5606. Implementation of commitments under Uruguay Round Agreements

Not later than September 30 of each year, the Secretary shall evaluate whether the obligations undertaken by foreign countries under the Uruguay Round Agreement on Agriculture are being fully implemented. If the Secretary has reason to believe (based on the evaluation) that any foreign country, by not implementing the obligations of the country, may be significantly constraining an opportunity for United States agricultural exports, the Secretary shall—

(1) submit the evaluation to the United States Trade Representative; and

¹ So in original. Probably should be “removes”.

(2) transmit a copy of the evaluation to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate.

(Pub. L. 95-501, title I, §106, as added Pub. L. 104-127, title II, §242(a), Apr. 4, 1996, 110 Stat. 964.)

§ 5607. Exporter assistance initiative

To provide a comprehensive source of information to facilitate exports of United States agricultural commodities, the Secretary shall maintain on a website on the Internet information to assist exporters and potential exporters of United States agricultural commodities.

(Pub. L. 95-501, title I, §107, as added Pub. L. 107-171, title III, §3101, May 13, 2002, 116 Stat. 288.)

SUBCHAPTER II—AGRICULTURAL EXPORT PROGRAMS

PART A—PROGRAMS

§ 5621. Direct credit sales program

(a) Short-term program

To promote the sale of agricultural commodities, the Commodity Credit Corporation may finance the commercial export sale of such commodities from privately owned stocks on credit terms for not to exceed a 3-year period.

(b) Intermediate-term program

Subject to subsection (c) of this section, to promote the sale of agricultural commodities the Commodity Credit Corporation may finance the commercial export sales of agricultural commodities from privately owned stocks on credit terms for a period of not less than 3 years nor in excess of 10 years in a manner that will directly benefit United States agricultural producers.

(c) Determinations

The Commodity Credit Corporation shall not finance an export sale under subsection (b) of this section unless the Secretary determines that such sale will—

- (1) develop, expand, or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities, without displacing normal commercial sales;
- (2) improve the capability of the importing country to purchase and use, on a long-term basis, United States agricultural commodities; or
- (3) otherwise promote the export of United States agricultural commodities.

The reference in paragraphs (1) and (2) to “on a long-term basis” shall not apply in the case of determinations with respect to sales to the independent states of the former Soviet Union.

(d) Use of program

(1) General uses

The Commodity Credit Corporation may use export sales financing authorized under this section—

(A) to increase exports of agricultural commodities;

(B) to compete against foreign agricultural exports;

(C) to assist countries in meeting their food and fiber needs, particularly—

(i) developing countries; and

(ii) countries that are emerging markets that have committed to carry out, or are carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the creation and expansion of efficient domestic markets for the purchase and sale of agricultural commodities; and

(D) for such other purposes as the Secretary determines appropriate consistent with the provisions of subsection (c) of this section.

(2) General restrictions

Export sales financing authorized under this section shall not be used for foreign aid, foreign policy, or debt rescheduling purposes. The provisions of the cargo preference laws shall not apply to export sales financed under this section.

(e) Terms of credit assistance

Any contract for the financing of exports by the Commodity Credit Corporation under this section shall include—

(1) a requirement that repayment shall be made in dollars with interest accruing thereon as determined appropriate by the Secretary; and

(2) a requirement, if the Secretary determines such requirement appropriate to protect the interests of the United States, that an initial payment be made by the purchaser at the time of sale or shipment of the agricultural commodity that is subject to the contract.

(f) Restrictions

The Commodity Credit Corporation may not make export sales financing authorized under this section available in connection with sales of an agricultural commodity to any country that the Secretary determines cannot adequately service the debt associated with such sale.

(Pub. L. 95-501, title II, §201, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672; amended Pub. L. 102-511, title VII, §707(a)-(c), Oct. 24, 1992, 106 Stat. 3350, 3351; Pub. L. 104-127, title II, §277(c)(2), Apr. 4, 1996, 110 Stat. 979.)

PRIOR PROVISIONS

A prior section 201 of Pub. L. 95-501 enacted section 1707b of this title prior to the complete revision of Pub. L. 95-501 by Pub. L. 101-624.

AMENDMENTS

1996—Subsec. (d)(1)(C)(ii). Pub. L. 104-127 substituted “emerging markets” for “emerging democracies”.

1992—Subsec. (c). Pub. L. 102-511, §707(a), inserted sentence at end.

Subsec. (d)(1)(C). Pub. L. 102-511, §707(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “to assist countries, particularly developing countries, in meeting their food and fiber needs; and”.